

SOME NEW BOOKS.

McMaster's Concluding Volume.

The work of a generation is concluded by the appearance of the eighth and last volume of the *History of the People of the United States*, by JOHN BACH MACMASTER (Appletons). It was in 1882 that the first volume was published, and the work has since then gone on impressing itself upon a widening circle of readers as an indispensable and a most judicious study of the political history of the period which it purports to cover, "from the Revolution to the civil war," and also as having a unique function and value in transcending politics and justifying the qualification of its title as a history "of the people," and thus a chronicle of popular movements and tendencies, social and political, as well as a study of what well worth doing and upon the whole, the consensus of the judges appears to be, remarkably well done.

I.

By the original plan of the work the end of it falls by ten years to coincide with the beginning of Rhodes. The period covered by the present volume (1848-61) overlaps the decade to which the first two volumes are devoted of Rhodes's history "that is to say, the period during which it became plain that the question of slavery, in spite of all the well meant efforts of union loving and peace loving citizens to suppress it and keep it in abeyance, would no more "doze" than Banquo's ghost; when it became the dominant political issue and swallowed up all the minor historical questions that troubled the old political parties and forced a new alignment, in which there was a Southern party, a Northern party and a third party pathetically struggling to keep or put back politics where it had been, but not strong enough to hold the balance of power between the new parties. No story could be better worth telling, and it is impossible to read in comparison of the manner in which it is told respectively by McMaster and by Rhodes.

Mr. Rhodes shows a greater fondness and ambition, whether or not a greater aptitude, for generalization than Prof. McMaster and also a keener interest in personalities. This finds expression in his numerous express "portraits" or "characters" of men contemporaneous in the events which he relates. The least objection to his practice is that Prof. McMaster's method is more strictly that of the annalist, of the "journalist" in the old sense, though it is a diary of things that happened before his recollection or even his birth that he is trying to reconstruct. His eschewing of generalities and confining himself to a day to day narration sometimes leads to his overlooking facts of the most important kind, such as facts which undoubtedly the publication of "Uncle Tom's Cabin" in arousing and organizing the anti-slavery sentiment of the North. "That book will make two million abolitionists!" exclaimed Rufus Choate. To this epoch making novel Mr. Rhodes gives its due weight. It would be hazardous to say that there is not an allusion to it by Prof. McMaster 500 pages. Although the recollections of a fresh reading recall none. It is certain that there is neither in the elaborate table of contents nor in the elaborate index any reference either to the book or to the author. Almost as startling is the failure to make any use of the books of Frederick Law Olmsted, by far the most valuable documents extant upon the social condition of the old South. On the other hand the most important effect of Hinton Rowan Helper's "Impending Crisis" receives full consideration. The explanation probably is that Helper's book "got into politics" directly, and was cited and even erected into a kind of shibboleth in an election to the Speakership, while Mrs. Stowe's operated entirely "out of doors" and does not seem ever to have become the subject of a Congressional debate. Prof. McMaster's method of preparation seems to have been to master the official documents and to supplement them by a wide and as nearly as possible exhaustive rummaging of the contemporary newspaper press. This method is so persistently and consistently pursued and the "clippings" so systematically incorporated without question or remarks in the text that it is often difficult to tell whether one is reading the author's own words or those of some forgotten publicist whom he is quoting. The method, as employed by Prof. McMaster, certainly gives his narrative a sense of reality and actuality and makes it very lively reading. His own style, without any special care for purity or correctness, is marked with a certain coarseness of diction which it shares with that of Mr. Rhodes, is eminently straightforward and readable. The intelligent reader who begins this present volume is almost certain to be captivated by it to the extent of being forced to read it through. Indeed, hardly since Macaulay has there appeared a historical work the reading of which is less of a task and more of a pleasure, than the necessary defect of such qualities be the occasional overlooking of historical agencies even so important as "Uncle Tom's Cabin," we must even put up with it.

II.

It was the more rapid rate of growth of the free North than of the slaveholding South that forced the slavery question into politics as the leading issue. Since and long before the "free soil" bolt from the Democratic party in 1848, even as far back as the Missouri Compromise of 1820, it had been clear that, when the North had a clear majority in both houses of Congress, the extension of slavery would be prohibited and prevented. That time was seen by everybody to be close at hand in 1850. Since the South could not stop the growth of the North, the Southern leaders looked about for new territory into which slavery could be extended, and which should thus become a counterpoise to the northwestern expansion. This had been the real motive to the Mexican war. It had resulted in the admission of Texas. It was purposed and even proposed to make four slave States out of that admission, so that the population there and such proportion of its area as to make such a proposal other than absurd. But the admission of Texas, as was soon seen, would not even secure to the South a net gain of two votes in the Senate. It would be offset by the admission of California as a free State. It was only by the unfortunate action of the Senate that the Wilmot proviso, which had passed the House, that slavery had failed in 1846 to be excluded from all territory which might be acquired as a result of the war with Mexico, including New Mexico and Arizona, which seemed to sanguine Southerners to promise profitable fields for slave labor, as well as California, which by evidence must be a free State. Hence the Southern outcrochings for territory to the southward which might become slave States

Hence the Ostend manifesto and Buchanan's subsequent threat to seize Cuba if Spain refused a fair price for it. Hence Walker's filibustering expeditions into Nicaragua, encouraged by Southern sympathy and material aid. Some of these were later repudiated, but it is already clear that unless the natural expansion of the Northwest could be offset by artificial expansion in the nature of conquest in Central America and the Caribbean slavery and the slave power in the United States would be at best stationary and therefore practically retrogressive in the face of Northern progress. It would not be long before the slave power would be outvoted in both houses of its even holding its own within the Union. The threat of disunion was natural and inevitable under these conditions.

Meanwhile the question was of getting more power within the Union. One Southern proposal was to continue to the Pacific the line of the Missouri Compromise. Jefferson Davis urged this and said it would content him. The doctrine had then indeed been invented, but it had not been adopted by the Supreme Court of the United States that the Constitution "ex proprio vigore" carried slavery into the Territories and that slavery existed by State laws. To the increasing majority of the Northern voters opposed a flat refusal to allow the extension of slavery into any Territory. Against this Douglas produced and supported with great parliamentary courage and debating power his doctrine of "squatter sovereignty," namely that the people of the Territory applied for statehood, when it should be admitted with or without slavery, according to the wishes of the inhabitants. Clay's compromise measures of 1850, in behalf of which Webster delivered that 7th of March speech which was common to all throughout the country, was a fact of politics while it was not worth to him a single vote from the South in the ensuing Whig convention, were denounced by the North as amounting to a repeal of the Missouri Compromise, which Douglas in the preamble of his Kansas-Nebraska bill admitted to have been "superceded by a new act of legislation." "Inconsistent" with them. In fact, slavery was by the Missouri Compromise expressly admitted south of the southern boundary of Missouri, while squatter sovereignty left the whole territory, south as well as north of that line, to be contended for by "actual settlers." Only so long protected against slavery by the Congress as measure, and they were then known as "abolitionists," nor would they have disowned that description. It was equally opposed by the Southern leaders, who were in 1854 coming to the constitutional doctrine announced in 1857 in the Dred Scott decision. With the election of Buchanan that the election of a President pledged to resist the extension of slavery would be regarded by the cotton States as a *casus belli*, or at least as justifying secession. The election of Buchanan simply postponed the inevitable result for four years. With an ear to what he had announced his intention to bring in his bill Dixon of Kentucky gave notice of an amendment expressly repealing the Missouri Compromise and Sumner of Massachusetts notice of an amendment expressly affirming it. But when the bill was actually introduced Dixon, of course, withdrew. What meanwhile had a talk about it with the President in which Pierce had promised to support it, declared himself satisfied with the measure and forbore to introduce the amendment.

III.

It seems that there was an assurance of local self-government and so of democracy about the Douglas bill which commended it very widely. It promised to remove the agitation of the slavery question from Congress, where almost everybody deprecated the continuance of the agitation, to the communities actually concerned. That promise was in a considerable degree fulfilled. The contest was transferred from the Potomac to beyond the Missouri. Northern and Southern propagandists were notified that they must continue their several propagandas by using "actual" settlements in sufficient numbers to secure a State government in their interest. As we say now, it was "up to" the slavery extensionists and the slavery restrictionists to prove their faith by their works. The new method of propaganda was promptly adopted. The Nebraska bill passed the House, each branch of the U. S. did not pass the House until the middle of May, and then by only 113 to 100, nor become a law by the President's signature until May 30. But before the middle of March, at a public meeting in Worcester, Eli Thayer had called on his hearers to take steps toward populating Kansas with freemen, and had organized the Massachusetts Emigrant Aid Company had been organized. It expanded the following year into the New England Emigrant Aid Company, with Thayer himself, Amos Lawrence and J. M. S. Williams as

It was a year later when the Southern slave propagandists in the United States took to the "assisted emigration." But though belated they were zealous. From all the cotton States bands of armed men were forwarded, pledged to make Kansas a slave State, and the fight was fairly on. No matter how often the reader may have read the story, either "by parcels" or "intentionally," he will not be better satisfied in this fit to hold anew in these pages.

Assisting emigration to Kansas was so eminently a piece of business that one would have expected the New Englanders to beat the Southerners at it without trouble. So they would have done, thanks to their superiority in enterprise and administrative ability, but they failed. The best conducted on equal terms. It was by no means so. In the first place emigration from the East to Missouri, and western Missouri was the enemy's country. The "Border Ruffians" of that State had moved into Kansas to take up lands, with the help of the Federal Government, and the very act even of making Kansas a slave State in the sense of a State in which slave labor was to prevail over free. That was recognized on all hands as impracticable. The climate which disbarred white men from working and forcing the agriculturist to rely upon black labor, not that the climate was so, nor were its natural products so, for the cultivation of which slave labor could be profitably employed. It was only to make Kansas a slave State by its Constitution that the Missourians had taken up claims which they had not in the least intention of converting into slave States. The Federal Government embelted emigrants from the far South who had pledged themselves to remain in Kansas only until Kansas was

mitted as a slave State. Buford's Southern contingent of some 300 men, bearing Bibles presented to them through the agency of a zealous South-
Baptist preacher, made no pretence of taking up claims, but were promptly mustered into the service as Kansas militia by Pierce's Territorial Governor, Shannon. They proceeded to execute the laws and maintain order by attacking Lawrence, the Free State headquarters, destroying the hotel, throwing the plant of the Free State newspaper into the street and burning the house of the Free State claimant to the Governorship.

The undisguised partiality of the Federal Administration for the pro-slavery cause was another heavy handicap. Pierce's first Governor, Hecker, was an effectual dismemberer of the honest and impartial man and became thereafter one of the Free State leaders. No charge of honesty or impartiality would lie against his successor, Shannon, nor against Pierce's Chief Justice, LeCompte, who gave his name to LeCompton and the LeCompton Constitution. Thus Buchanan's first Governor, Robert J. Walker, was "sound" the fact that he was a Mississippian and a pro-slavery man seemed to warrant. But he too turned out to be an honest man and had as much to report that the Free State men were an enormous majority of the actual settlers and saw to it that they were not excepted to the rule of Federal appointments in the Territory. Although Buchanan at first sustained Walker's insistence upon getting an honest vote on the State Constitution, he wobbled when the time came and endeavored to secure the adoption of a fraudulent and misrepresentative one. He was so much for Douglas, who saw his "popular sovereignty" converted into a party football and notified Buchanan he would oppose him in the Senate, whereupon Buchanan warned him that "no Democrat ever yet differed from an Administration of his own choice without being called a traitor." Douglas, for himself, retorted, "Mr. President, I wish you to remember that General Jackson is dead. Assuredly Andrew was not reincarnated in James. Be that as it may, from first to last the influence of the Administration was thrown in favor of the propagandists of slavery. I am not sure that Mr. Pierce's record of his activities in the Kansas matter will recall his declarations that two of the most grievous obstacles he encountered were the fanaticism of Garrison and the Abolitionists, who insisted on confounding resistance to the spread of slavery with an intention to attack it. I am not sure that they had a constitutional right to be and that the policy of old John Brown, whose murders and outrages, committed upon the pro-slavery settlers, were as flagitious as any that Atchison and Strickfellow committed upon the Free State settlers and blunted the point of an appeal to the conscience of the country against the barbarism of the Southern methods."

Full and minute as Prof. McMaster's account of the struggle for Kansas is it is not a page too long. That was not an episode, but the epoeoe of American politics during the administrations of Sumner and Lincoln. Everything that is now remembered of public events in those years depended on it or grew out of it. It was his speech on "The Crime against Kansas" that brought upon Sumner's head Brooks's bludgeon and made a thousand times as many Republicans as the Kansas bill had made if it had not been thus answered. It was the question of his share in the troubles of Kansas that formed the staple of the debate of Douglas with Lincoln. The result of that debate was indeed the reelection of Douglas, which was the least of the evils that the administration for its attempt to read him out of the party for playing a manly and patriotic part, but which also brought before the country the new man in national politics who had made himself the spokesman of the prevailing opinion of the country, and was to be his chief when the struggle which had so long been preparing changed peaceful politics to civil war.

It is clearly brought out here how enormously Buchanan's weakness cost the country. There was ample time for the President to make arrangements for the evacuation of the Southern seaboard in a defensible condition. The opportunity was thrown away. There can be no definition of treason against the United States under which Floyd, his Secretary of War, must not be judged guilty of it. Floyd's own State of West Virginia did not secede and he was not a traitor, that should secede when he left the Cabinet in December, having, so far as in him lay, spiked the guns of the United States and disabled the nation from defending its own property. There is no more shameful story than that of this Secretary of War who sold the Government's arms and muskets at \$2 each, showing his guilty knowledge of the nature of the transaction by his arrangements for privacy. Another unquestionable traitor, under any theory of the constitutionality of secession, was Twigs, who surrendered 2,500 troops and all the army stores to the secession agent of the State, paroling the troops and against the Confederacy until exchanged. It is true that Twigs was twice asked for orders from Washington.

ton and received none, from Holt, who succeeded Floyd at the end of 1860, any more than from Floyd. Twigs warmly resented Holt's dismissal of him all the same "for treachery to the flag of his country," and wrote Buchanan a blistering letter that he would hold him responsible for the insult and would visit Lancaster for that purpose. This was brutum fulmen, for if he had entered Pennsylvania for that purpose he would have been in danger of having the treasury actually abolished and of being hung by punishment for a crime as ridiculous and shameful spectacle as is shown in history than that which he exhibited of Washington in the early months of 1861 with the Southern leaders all laboring to weaken the Government and poor old Buchanan acquiescing in their machinations. If he had not done this, the Government would have entered on the inevitable conflict at an immeasurably greater advantage than it possessed. It is true that in the last days he invoked the help of three vertebrate animals, Stanton, Holt and Jeremiah S. Black, but a three could not effect a transfusion of reason to Buchanan. He would not give a minute to any man's prayers, and the poor old man's complaint. He did really show at the last one flash of his many spirit, in reply to the demand that he should withdraw the troops from Charleston harbor: "This I cannot do; this I will not do." But this was then too late.

IV.

The political story of this criticism period, we may repeat, has never been better told. But there are many other things to be said, and these I will now tell here. The volume really is a "history of the people of the United States," for the time it purports to cover

longside and outside of the political movements there were other movements not less popular and not less important. Some of them sooner or later got into politics. The anti-Catholic feeling issued not only in an agitation but in a political party, the "No Foreign Bishops," which took on a development astonishing and incredible to the old-fashioned politicians, carried States almost without notice, and seriously threatened, by absorbing such of the elements of the old Whig party as the Republican party did not absorb, to hold and exercise the balance of power in the election of 1856. Filibustering in Cuba as well as in Central America, and the clandestine revival of the slave trade, directly touching the ports as well as the interior parts of Cuba, were of course of a political connotation, and parts of the Southern effort to increase the political power of the South against the swifter natural growth and expansion of the North. The visit of Kossouth also had its political aspects and relations. The welcome spontaneously offered to a political exile who had done and suffered for the nationality of his people had been so numerous and interesting that his marvellous mastery of a language which had so lately been strange to him, a feat of eloquence which has hardly any parallel, that his reception had not been equalled since that of Lafayette a generation before. If he had understood its character, he would have returned to Europe to agitate for Hungary with greatly increased resources. As it was he took away \$90,000, and he travelled in an almost royal suite with his family, two women, two sons, and his stately progress took money which practical Americans thought might better have been devoted to his cause. Worse than that, he undertook to dictate and change the policy of the country of which he was a guest, and even to incite foreign born voters to revolt against that policy. He did succeed in eliciting from Webster, the Secretary of State, at a public banquet expressions of sympathy for his cause, and such a diplomatic representation of Austria made bitter for him. But the President, Fillmore, plainly told him that he could expect nothing from us but our sympathy, and Clay said in an interview: "As a dying man I oppose your doctrine of intervention." But Kossouth would not take no for an answer, undertook to take an appeal to the people from their representatives, and so wore out his welcome. Coming to the service of civil process, and in the language of Roscoe Conkling, "Such was the bright beginning and the bitter end of a halcyon and vociferous proceeding."

The Mormon question also got into politics. It might have been kept out indefinitely, after the Mormons had taken refuge so far from the haunts of wicked men as to be immune from but for the impulse to migration given by the discovery of gold in California, and the still more powerful impulse to the invasion of "actual settlers" administered by the admission of California as a free State. The old Mormon trail was the readiest passage to California, as indeed it still is, for the Union Pacific Railroad has not yet been built. The Mormon Church and State found that along it hordes of Gentiles were coming to disturb his ancient solitary reign. He took a short method with the intruders. The atrocities of the Mountain Meadows massacre were not fully known until many years later by the confession of Lee. But suspicions were aroused, and the "Gentile" who took the declaration of independence of the United States, and to let it be known that the national writs did not run in his domain. No Government could stand this, and the expedition of Albert Sidney Johnston was a necessity. It restored what our author calls "the semblance" of national authority, though it only killed the Father of the Salt Lake City. Already the Republican party had denounced as twin relics of barbarism polygamy and slavery, and it was plain that as soon as more urgent matters had been disposed of, an anti-Mormon crusade would be undertaken.

The panic of '57 hardly got into politics. It would be pretty certain to do now, though it developed the seeds of an imported socialism among German born workmen, who "demanded" employment at high wages on public work and denounced the money power, which instead of calling it an "octopus" they described as a "hydra," which seems rhetorically preferable. And it was Prof. McMaster's concluding volume and so well told as to make it indispensable for students of the period.

The title of *Experiments in Government* by Senator Elihu Root (Princeton University Press) is compounded of the titles of the Senator's two Stafford Little lectures before the students at Princeton last spring. Senator Root's qualities are known: lucidity of conception; clarity and concise completeness of expression; earnestness of conviction and dignity in appeal, main might with convincing manner. And these qualities combine in the book, despite the limited scope of its first intention, a far from negligible addition to the literature of American politics.

Senator Root will hardly be accused of demagoguery, and in view of his complete immunity from the application of such criticism it is interesting to note that in his calm statement a considerable portion is granted of the fundamental concepts of the reformers, while their conclusions are, in his opinion, their conclusions on their own words, there have been since the Constitution was adopted "a general social and industrial rearrangement." The place in the scheme of American life once held by the State capitals is now occupied by the great centres of industrial production and trade. Instead of economic independence we have economic interdependence; collective bargaining between workers and managers; men and women. And the changes in political organization have been equally great: "the real power of government came to be vested to a high degree in unofficial political organizations," an extraconstitutional method of administering constitutional government. The laws that a century ago were adequate to secure individual and public welfare are unduly the new conditions in many respects. In one question, for example, the field: In meeting the new conditions we are to readjust our laws or to "modify the principles upon which our government is based"?

Evils cannot be abolished merely by statute; we must not look to government for more than it can accomplish. "The chief motive power" of civilization has been "the sum total of intellectual selfishness." If the good government we seek with the new conditions is to be realized we must invest it with authority to interfere with the individual conduct of the citizen to a degree hitherto

known in this country." In other words, an increased paternalism of government seems unavoidable; but toleration of undue interference "breeds the habit of reliance upon government at the expense of individual initiative." The shortcomings of inconvenience in government, the Senator concludes, "is not by itself sufficient to warrant a change of system." And let no change be made that sacrifices the possession of good achieved.

Applying these considerations: Direct nominations, party enrollment, Presidential preference primaries, &c., matters purely of party government, are items in the effort to escape the consequences of the party system. Party government, being confounded with the processes of regulation of governmental institutions. But the initiative, the compulsory referendum, the recall of officers and the popular review of judicial decisions are aimed at the organic structure of government; and Senator Root's calm examination of their qualities in the light of the distinctive character of the American government is sufficiently seen to warrant so solemn in its suggestion to give pause to the boldest of immediate reformers.

With no air of grudging concession Senator Root admits the usefulness, in a limited field, of initiative and referendum: "in certain great simple questions susceptible of a 'yes' or 'no' answer. For the radical element has no sight of is the vast area of legislation in which beneficial results can be wrought only through the conflict of the forum. Resort to the expedients of "direct government" is motivated by distrust of legislatures, and it can but increase the very evils at which it is aimed. The expedients of initiative and referendum are not a desirable and, in our applying, an adequate substitute. Direct nominations for the Legislature and short ballot blessings the Senator will grant you; but the "remedy" narrows down to this: "The true way is for the people of the country to address themselves to the better government of the country by electing their legislative representatives and in holding those representatives to strict responsibility."

In "Experiments" the vital error pointed out rests in trusting an electorate that fails in the duty of selecting capable and honest representatives to perform for itself "the far more serious and important duty of electing the 'Essentials'." Similar vital error is shown in the popular attitude toward national institutions in the proposal to override the Constitution by vote instead of amending it: "Let us change and adapt our laws as the shifting conditions of the times require, but let us never abandon or weaken this fundamental and essential principle of our ordered liberty." It is good that so noble an utterance in defence of American institutions, so measured and intelligent a remonstrance against hysterical suggestions of reformation by mere fiat, has been published for a wider audience than that of a college lecture

In *The Old Law and the New Order* Houghton, Milfin & Company (Grosvenor House) of the New York bar collects his magazine articles and addresses on subjects akin to Senator Root's, but with a less concentrated choice of topic and in manner more barristerial, though no more forbiddingly technical than it is friskily "popular." He discusses the increasingly emphasized opposition of the legislative and executive departments of our Government, both State and Federal; the attack on the courts, suffering from underestimating hostile criticism and the "pudicrously formulated defence; the "punishment" of corporations, "industrial inequality" and the "ethics of production."

In State and nation the change in relative importance of Legislature and executive is matter of common observation, whether regarded as executive usurpation or legislative abrogation, the Governor or President doing too much, the Legislature or Congress doing too little. The cause of the former is the selection, organization and function of the State lawmaking bodies, and fecund of political imaginings have evolved schemes equally numerous and ingenious, all the way from the development of a professional lawmaking class instead of stepping stone seekers after political preferment, or representation of class activities, industrial, commercial and professional, to the "commissioned subdivisions" up to "centralized government" for States.

The Legislatures have yielded up something of their dignity and power in the face of the central Government, and legislative functions are increasingly subordinate to the activities of the executive member of our famous trinity of governmental forms. Alger has said that business responsibility is the tendency of the last few years upon the system of State legislation. That the fault lies or even began in the individual executive's itch for power he correctly denies. The Legislatures are "struggling with the impossible" when they are expected to make laws of purely local and restricted application at the expense of time that ought to be devoted to the interests of the public at large. Hence the "muddle of hasty lawmaking." The individual legislator cannot watch all the bills, nor can the public keep track of the individual lawmakers. Cynical comment on the legislator's ability to refrain from an executive's ability to stand watching and on the public's ability to refrain from an executive's prerogative as a check upon the creatures of its own enfranchising agency aside from the point, Mr. Alger formulates the subconscience philosophy of the lawmakers, less than half facetiously, thus: "Let us put it all up to the Governor or President. Let us give over to him the whole business of making this machinery of lawmaking in our behalf."

As Mr. Alger sees it, the electoral college looks to the President to use executive power in common sense in selecting the laws which "deserve to be enforced," while Congress submits to the usurpation of its authority with surprising equanimity. He thinks that the "some of the usual mode of operation employed by the present Administration in securing its ends the picture seems a bit overdrawn. Muttured accusations of "obedience" by the President—a consciousness exaggerated phrasing intended to have no connotation beyond that of Executive aggression—proved to lack content enough to etch any figure of horror on the public imagination. Perhaps the favored Presidential term "team work" between the two departments is the truer description of a phenomenon not yet so familiar as to furnish reaction to joined as false curiosities.

More strictly of the law legal is *Constitution and Justice*, by FREDERIC R. DENT (D. Appleton and Company), "statements of the conflict between precedents and procedure in Presidential election law." He writes of "the challenge to the Constitution," of criminal procedure and jury trial and "perversion of precedents."

by historical misinterpretation; of new citizens and aliens in their relation to the laws and the Constitution, of international law and political crime, and of professional incompetency as the responsible factor in the existing "crisis of the law."

The need of readjustment discussed by Mr. Root is brought out in terms of the law as an agent by Mr. Couderc. Continued immigration, filling up the land and attended by a growth in the industrial centres, was a factor in the great changes of the last half century. With it go the problems of new economic development, the formation of masses of capital attended by the rise of monopolies and the end of the competitive industries of simpler times. So too the relations of employer and employed have become puzzlingly complex. They are no longer on an equal, independent footing. Forty years ago the law was content to run the course of its trade, which were such only as might be avoided by carefulness on its own part; but in modern production by machinery on a vast scale the percentage of risk is greater and the value of individual caution as a safeguard is less. And while American constitutions were made to protect the freedom of the individual in his industrial as well as in his private life, the modern era has seen clashes with the earlier grants of rights. Mr. Couderc brings out quite clearly the nature of the change in conditions and indicates plainly the extent and character of the field in which the forces of readjustment must operate. The law as a policeman was the right and natural thing in the early American era, but it must now be made the means to devising and carrying out an intelligent and constructive program of reformatory and regulatory legislation.

From this matter at the beginning of the book we proceed to a concluding chapter in which he boldly attributes blame for public dissatisfaction with the law to the deficiencies and delinquencies of the bar itself. He finds in addition to shallow opposition to the law work of the bar, a general ill-will towards the law spread discontent based upon the too frequent failure to harmonize with the living day and the unnecessary expense and delay of litigation. He urges a relaxation of the sway of "stare decisis" in order that the law may "reflect the views of the living rather than those of the dead." Social and economic transformations, he says, are the "big work and fast work of the law." A lawyer should be a part of the law's life.

Do we need more law reform? Is codification the panacea? No, says Mr. Couderc; the fault, despite the need for simplification of procedure, is not inherent in our system:

To my mind the general unpopularity, not to say disrepute, into which the law, and thereby the administration of justice, in many parts of the country has fallen is due in large measure to incompetency both at the bar and on the bench.

Dishonest Judges? No; the trouble is in selection on a basis of political reward instead of exclusively by professional merit. But back of the Judges are counsel; the bench leans heavily upon the bar, the source of its appointments. Under this condition the significance in the big cities especially, of a horde of unlearned young lawyers still more deficient in point of respect for the noble traditions of their profession. But "in respect of professional incompetency we have seen the nadir"; the profession is striving for its own purification and elevation. For the bar higher standards must be insisted on as requirements for admission; for the bench, the elective system being probably here to stay, let public interest be aroused to a more intelligent choice. Indifference of the electorate, inadequacy of the bench.

**French and German Essays in Crimi-
nology.**

Recent additions to the Modern Criminal Science Series (Little, Brown and Company) are *Crime and Its Repression* by GUSTAV ASCHAFENBURG, professor of psychiatry in the Cologne Academy of Practical Medicine and editor of the *Journal of Criminal Psychology and Criminal Law Reform*, translated by ANASTASIA K. HARRIS, originally by MAURICE FARMELLE of the University of Missouri and introduced by ARTHUR C. TRAIN, a New York lawyer-sociologist; and *Prof. GABRIEL TARDE'S Philosophy*, translated by RAPELLE HOWELL of the bar of this city, with editorial preface by EDWARD LINDSEY, a Pennsylvania lawyer, and an introduction by HOWARD GATTS of the Northwestern University. Eight hundred and eighty-eight pages of sociology and criminology. It may be pardonable to say, is a pretty heavy dose of reading for the dog days; but without plumbin' too serious depths of elogy some enterprising ideas may be discovered and perhaps even a little profit for instruction in the ways of the world, the rights and duties that govern his place in the social structure.

Monsieur Tarde is philosophical, Her-
schaffenberg is statistical, which is not
more than to say that each approaches
his subject in a manner strictly typical
of the genius of his own nationality.
The distinguished French philosopher
M. Bergson speaks very prettily of his
compatriot: There are two kinds of
thinkers. There are those who see
desirable objective point and build
a bridge of sympathy by which they man-
age to connect it to its secure and
occupation, and there are those who
vagrabonds of philosophy who without
time tabbed itinerary traverse the world
of thought: "Their spirit accords
well with the unity of things that a
their ideas are naturally consistent
Perhaps M. Tarde will not altogether
appreciate this touch of M. Bergson's
delicate mysticism. It continues:

Their sections, on whatever subject, are by whatever way they set out, arranged themselves in order by always returning to the same point. Their intuitions, which are not systematic, organize themselves in a system. They are philosophers without having sought to be such. To this class belonged Gabriel Tarde. That which strikes one at first in him is the unexpected fan- tasy which multiplies the new viewpoints, the original and brilliant ideas. But soon the unity and depth of the theory reveal them- selves. One grand conception underlies the whole construction and imparts to it a direction.

Pretty—but Berzsonian, a composition dealt on the sinister side. It is not quite internally consistent, for the underlying and directing conception may seem to those not versed in the subtleties of philosophical word tailoring to war against the foregoing characterization. What we would say of M. Tarde is that his handling of the problem of moral responsibility is, in his language, both comprehensive and keen, warm with human feeling but lighted with reason, and for the ordinary, non-technical reader instinctive with a common sense appreciation of motives and desires and the hidden working of our natures that gives pleasure to the performance of a seemingly forbidding task. To be French is to be readable.

It is not in the rules to review a book.

common consent; and M. Tarde's outline of his work is impressive by virtue of its hint at the extent and content of the vast area of inquiry opened up by so seemingly simple a topic as the question of responsibility. Professor "general considerations" involve the criminality of savages and the processes of moralization; the reconciliation of moral responsibility with determinism; conscience with science, the conception of duty; the influence of the social situation; the repudiating determinism; and the positivists, awake for eclecticism and scepticism, the way of the impartial philosopher is hard. The questions must be put and answered. What is responsibility? What is a crime? What is the crime? The answers are chapters on the theory of responsibility and the theory of irresponsibility, the factors of personal identity, social relations, age and sex, normality and degeneracy, disease, madness and drunkenness, insanity, and the Classification of crimes successively with the criminal, death, the judgment, the penalty and the death penalty.

We read with special interest, and think others may, section 53 in chapter V, "Psychology and (oft) the Criminal." We commend it to every novelist who has a hand in his hand, and a gold mine to him, with its tracing of the lines of motive and progress to the execution of the evil lust; there are thrills in it. And stimulating mental exercise is to be had in following M. Tarde's meticulous analysis of the degrees of responsibility. It works by a parallel in "gun play"; you may be in the street in your hand; some one comes up behind, grasps your fist clenched on the revolver butt and physically forces you to discharge it into a group of persons standing by. You cannot be prosecuted or punished for the crime, but the need may be the compelling agent, the second hand on the "gun." But suppose you fire a pistol into the street, just for fun, without looking to see if anybody is there. If he is, and you hit him, you are responsible; but less so than if you had deliberately aimed at him. You are not induced to shoot, having sacrificed your pleasure to avoid risk of injury to your fellows.

The Aschenfurgian work is more matter of fact; its pages bristle with tables of statistics. There is something imposing about a table of figures; its neat array and general businesslike air command respect. But how to let it tell its tale, that, for the never could understand figures. Mathematics we accept as a conventionally necessary evil; let who will manufacture them, we shall not even dabble in the black art. Undoubtedly, however, the figures prove many things, or they would not be there. They prove, for instance, that more than a woman is struck by lightning, and they prove things about crimes committed on Monday and those that fall on a Sunday.

Now, if the figures prove those things, and when Herr Aschaffenburg says they do that is enough for us, all well and good; we might want to murder some time—we often do want to, but some day we may really make up our mind to strike off the shackles of constitutional want of energy and do some of those murders; but so long had purely negative and fatalistic existence in the back of our head, we really decide to make a job of it, and then we shall be glad to know just what is the fashionable hour, place and manner for the performance of a particular kind of a murder we contemplate. But it is the deductions from these useful tables that we find objectionable; we cannot see just what "badness" the Herr Professor—not as an individual entity but as the representative

tive of a class—has to go poking into other folk's affairs. Home affairs, for instance, are little more than a nuisance. As an example. The professor says his figures demonstrate greater criminality among married women than among their "single" sisters. Well, what then? Are there not pleasanter subjects for thought and conversation? Why not drop the matter with a hint, instead of bludgeoning the poor man with a fact? If the professor is the overpowering influence? Suppose you can prove the fact beyond dispute, exhibit the exact incontestable percentages; what have you produced? You have not explained a burr under any saddle of conscience. You have not derived any benefit from finding truth. The only thing that could reach the evil one has dragged into the light would be the abolition of marriage. Mary Jones good, may marry John Smith good, and "go to the bad." Or she might marry Thomas Robinson, bad, and stay good—and, indeed, make Thomas good too. The own observation of a single girl, rather than the influence on the woman's part of one of contamination by the man.

All of which, unlike the figures of the sociologist, proves nothing at all. And the professor himself indulges in some such similar speculation when he comes in a chapter on "Parentage and Training." I shall probably fight in vain against what he says to natural heredity disposition, but not against what is merely the external consequence of descent." And, of course, environment. The point is that reform results from concrete means, and the tables do not show what individual cases to tackle.

Both these books will interest the reader. They are crammed full of concrete and useful suggestion, and have a scientific and social element, and will ban them from the public library, and for fear of wrong suggestion to the morbid mentality.

**AUTHOR OF "CROWDS"
MINISTER AND EDITOR**

Gerald Stanley Lee, whose latest book, "Crowds," recently published by Doubleday, Page & Co., is attracting a great deal of attention as an interpretation of the inspiration behind the efficiency movement, was born in Brooklyn, Mass., in 1862. His father was Dr. Samuel Henry Lee and he usually took his son with him on his visits to the ministry. He was graduated from Middlebury College in 1885 and from Yale Divinity School in 1888. He was ordained in the Congregational ministry in the same year and accepted a pastorate at Princeton, Minn., where he served for one year. The following year he took a pastorate in Sharon, Conn., where he remained until 1892 and the next three years was spent in West Springfield, Mass. About this time Dr. Lee accepted a position in Smith College, where he was first a substitute in the department of rhetoric and later a lecturer on the literary arts in modern times.

His first book, "About an Old New England Church," was published in 1897 and was followed in close succession by "The Shaker 'Christ'" in 1898, the "Art of Reading" in 1902, "The Church and the Book" the same year; "The Voice of the Machines" in 1906; "Inspired Millionaires" in 1908, a new "Crowds" in 1913. For the last eight years Mr. Lee has edited the *Modern Times* magazine, which he calls an